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Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Genesys Research, Incorporated

**File:** B-245421

**Date:** January 2, 1992

Ann D. Mitchell, Ph.D., for the protester.  
David J. O'Connor and Anthony G. Beyer, Esq., Environmental  
Protection Agency, for the agency.  
Christina Sklarew, Esq., and Michael R. Golden, Esq., Office  
of the General Counsel, GAO, participated in the preparation  
of the decision.

### DIGEST

Protest against exclusion of proposal for research support activities from the competitive range is denied where technical evaluation of proposal which was not challenged by protester was reasonable and consistent with evaluation criteria established in the solicitation and contracting agency determined that the proposal had no reasonable chance of being selected for award, and protester does not contest deficiencies in proposal.

### DECISION

Genesys Research, Incorporated protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. D100085M1, issued by the Environmental Protection Agency (EPA). Genesys also protests the agency's denial of its request for a copy of a document--a peer-review report on the research program which it considered material to the preparation of its proposal, and the agency's denial of its request for an extension of the RFP closing date. Further, Genesys protests the technical and cost evaluation criteria as restrictive of competition and favoring the incumbent.

We dismiss the protest in part and deny the protest in part.

The RFP contemplated the award of a level-of-effort, cost-reimbursement contract for research support activities for the Health Effects Research Laboratory, Genetic Toxicology Division, located in Research Triangle Park, North Carolina. The support activities include facilities scheduling, daily on-site and off-site operations, and maintenance of the

facilities. The solicitation was issued on March 5, 1991, with a closing date for receipt of initial proposals set for April 16.

Under the RFP, offerors were required to submit separate technical and cost proposals. The RFP advised that the award would be made to the responsible offeror whose offer conformed to the solicitation and was most advantageous to the government, cost or price and other factors considered. The RFP stated that technical quality was more important than cost or price, and established the eight technical evaluation criteria under which technical proposals would be judged. Under the evaluation scheme described in the RFP, technical proposals could receive a maximum of 1,000 points. Under technical, eight factors were listed: (1) availability and ability of personnel; (2) general corporate experience; (3) senior personnel; (4) transition plan; (5) quality assurance plan; (6) knowledge and approach to statement of work; (7) reporting requirements; and (8) off-site facility. The RFP also indicated the maximum number of points available for each of the criteria, indicating their relative importance in the overall evaluation.

On April 4, Genesys requested that the agency provide a copy of an internal EPA document that it believed would provide guidance for preparing Genesys' proposal and requested that the closing date be extended to allow the firm time to review the document; EPA denied both requests, although it allowed the protester access to the original document on-site. On the scheduled closing date, the agency received timely proposals from Genesys and the incumbent contractor, Environmental Health Research and Testing, Inc. (EHRT).

A technical evaluation panel reviewed and scored the proposals. The panel gave Genesys' proposal a total score of 240 points; it was considered unacceptable overall, with major deficiencies under six of the eight evaluation criteria. EHRT's proposal received 875 points and was considered fully acceptable. The contracting officer determined that only EHRT was in the competitive range.

Genesys was notified of its exclusion from the competitive range by letter of August 6. After Genesys requested more information from the EPA concerning the rejection of its proposal, Genesys filed this protest. On August 28, the EPA determined that because the contemplated contract involved essential support services, urgent and compelling circumstances significantly affecting the interest of the United States required that the contract be awarded notwithstanding the protest. The contract was awarded to EHRT on September 30.

Genesys' protest of the EPA's denials of its requests for the release of the peer-review document and the extension of the RFP's closing date is untimely. By amendment dated April 5, prior to the initial closing date of April 16, the agency advised firms that the document could be reviewed on location because it was bound in such a way that made it difficult to copy. The agency also advised that the closing date would not be extended. Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing time for receipt of proposals must be filed prior to that time. 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991). Here, the refusal to delay the closing date and to provide a copy of the document was apparent from the amendment. Since Genesys did not protest these matters until its protest filed with our Office on August 28, 4 months after the closing date, this aspect of its protest is untimely.

Genesys also protests that the eight technical evaluation criteria established under the RFP were "each prejudicial to a greater or lesser extent in favor of the incumbent," and alleges that the RFP's instructions for the preparation of cost proposals were restrictive of competition and provided the incumbent an unfair competitive advantage. These matters are also untimely raised, since, as stated above, our Regulations require that protests based on alleged improprieties that are apparent on the face of the solicitation be filed prior to the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1), supra.

Genesys next protests the EPA's exclusion of its proposal from the competitive range. In its initial protest submission, Genesys asserts its belief that in spite of the disadvantages it attributed to the allegedly defective specifications and instructions, its proposal was sufficiently responsive such that it should have been included in the competitive range. Genesys further argues that it should have been given an opportunity to address any weaknesses in its proposal through discussions and the submission of a best and final offer.

The agency evaluators found that Genesys' proposal was deficient and unacceptable, and that the deficiencies would require major revisions. For example, under the first criterion, availability of personnel, offerors were required to include letters of intent or other evidence to show that the designated personnel would accept employment in the event of an award; Genesys submitted no letters of intent, showed no specific ability to attract the incumbent staff or to provide appropriate replacement personnel, named only very limited technical staff who presumably would be available, and indicated that its current laboratory staff

was very small. The review panel found that Genesys had not provided any assurance that it could attract the staff necessary for performing the contract. Under the criterion of senior personnel, Genesys provided resumes for persons only available as consultants who would not be employed full-time by Genesys and were therefore not considered appropriate to manage research areas or supervise in a senior capacity. Under knowledge and approach to scope of work, the panel found the protester's proposal lacking in specificity in many areas, relying on restatements of the RFP's scope of work instead of proposing specific approaches or protocols to accomplishing the research activities. Under the criterion of reporting requirements, the RFP advised offerors to submit examples of reports on a task and subtask basis; however, Genesys submitted no examples of reports it had prepared. Under the off-site facility criterion, the panel found that Genesys did not currently have appropriate off-site lab space, but proposed to expand its current facility after the contract award. This was judged to be a serious problem because of the potential for delays in completing and equipping new labs and in relocating major equipment for the complex research work to be performed. The evaluators reported that correction of these and other deficiencies would require a major rewrite of Genesys' proposal since revisions would involve, for example, providing a detailed hiring plan, including identifying senior personnel to manage the work, a detailed explanation of how Genesys would perform the work, and a plan and schedule to timely expand its facilities.

In its comments on the agency report, Genesys does not rebut the panel's evaluation or contest the agency's findings of deficiencies in its proposal. Instead, the protester reasserts its complaints against the alleged restrictiveness of the technical evaluation criteria and the EPA's denial of its request for a copy of the pre-review document and its request for an extension of time to prepare its proposal. Genesys contends that given these circumstances, "it would have been surprising" if any proposal other than the incumbent's had been able to demonstrate the requisite capabilities, had an absence of major technical deficiencies, or had been able to achieve a significantly higher score. In addition, Genesys asserts that it had:

"every reason to believe that it would receive clarification of the EPA's requirements and be provided an opportunity to address any deficiencies or weaknesses in its proposal that were perceived by the EPA through the mechanism of a request for a best and final offer."


In short, Genesys concedes the deficiencies in its initial proposal, but argues that the restrictive solicitation terms

and the agency's failure to conduct discussions were the causes of its not being able to submit an acceptable proposal. Since we have concluded above that Genesys' protest of the solicitation terms is untimely, the remaining issue is whether the agency was required to conduct discussions with Genesys.

Where major revisions would be required to make a proposal acceptable, the agency is not required to include a firm in the competitive range and hold discussions with the firm. Polar Prods., B-242079, Mar. 27, 1991, 91-1 CPD ¶ 331. As stated above, the record shows that Genesys' proposal did not satisfy the RFP requirements. Specifically, Genesys failed to furnish evidence that it had, or could, readily hire senior personnel and staffing to perform the work, and failed to identify specific approaches to accomplish the work or to provide examples of research reports it had prepared. Genesys also did not provide adequate assurance that it could establish, in a timely manner, the off-site lab facilities necessary to do the work. Since correction of these deficiencies would require a detailed hiring plan, including identification of senior personnel to manage the work, a specific explanation of how Genesys would perform the work and a plan and schedule for timely expansion of facilities, we concur with the agency that only major revisions could make Genesys' proposal acceptable. In addition, EHRT's price was lower by approximately \$2 million. Under these circumstances, we find that Genesys' proposal properly was excluded from the competitive range.

Finally, we note that the protester has included a number of references in its protest to "continuing procurement improprieties," such as agency bias in favor of incumbent contractors, which it alleges are not isolated instances relating only to this procurement. To the extent Genesys' protest is directed against these broader issues, rather than the particular procurement at hand, it is outside the scope of our bid protest function and may not be considered. See Cajal Defense Support Co.--Recon., B-238621.2; B-238622.2, May 18, 1990, 90-1 CPD ¶ 488.

The protest is dismissed in part and denied in part.

  
James F. Hinchman  
General Counsel